

OGC Has Reviewed

Deputy Chief, Personnel Division (C)

4 February 1953

Office of the General Counsel
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1. The following extract from opinion B-112674 of the Comp. Gen. dated 5 January 1953 is forwarded for your information.

*Question No. 4:

"Section 401 of Public Law 455, 82nd Congress, which prescribes that no funds shall be available to pay for annual leave accumulated in any year and unused at the close of business on June 30 of the succeeding year, provides that it shall not apply to officers or employees whose post of duty is outside the continental United States. In applying a similar provision in section 1212 of Public Law 759, 81st Congress, which affected only leave earned in 1950, you decided that the exception applied only to an officer or employee whose post of duty at the close of business June 30 was outside the continental United States (30 Comp. Gen. 514). It has been suggested that section 401 of Public Law 455 may be interpreted differently, in view of section 208(a)(2) of the Annual and Sick Leave Act of 1951.

"When an overseas employee transfers to the continental United States, may all annual leave which was earned overseas be considered as excepted from section 401 of Public Law 455, or will a transfer prior to June 30 cause the leave earned in the preceding year to become subject to section 401?"

"Section 208(a) of the Annual and Sick Leave Act of 1951, 65 Stat. 682, is as follows:

"Sec. 208(a) In any case in which—

"(1) The amount of accumulated annual leave carried over into the calendar year 1952 by an officer or employee under provisions of law applicable to such officer or employee on December 31, 1951, is in excess of the amount allowable under the applicable provisions of section 203, or

"(2) the amount of accumulated annual leave to the credit of an officer or employee who is subject to the provisions of section 203(d) and who becomes subject to the provisions of section 203(c), such excess shall remain to the credit of such officer or employee until used, but the use during any year of an

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amount of leave in excess of the aggregate amount which shall have accrued during such year shall automatically reduce the maximum allowable accumulation at the end of the last complete biweekly pay period in any year until the accumulation of such officer or employee no longer exceed the amount prescribed in the applicable provisions of section 203.

"The purpose of the entire section just quoted seems primarily concerned with the establishment of maximum leave accumulation ceilings for (1) employees who have accumulated annual leave in excess of the maximum limitations of section 203 when they became subject to such act, and (2) employees with a maximum accumulation ceiling of 90 days as provided in section 203(d) of the act, Stat. 680, who have been stationed outside the continental limits of the United States but are transferred back to the United States with leave accumulations in excess of the 60 days permitted in the United States. In any event, section 203(a) of the Annual and Sick Leave Act of 1951, may be regarded as having been modified to the extent of the limitation upon accumulation of annual leave prescribed by section 401 of Public Law 455, 82d Congress, approved July 5, 1952, the later statute. See generally, 27 Comp. Gen. 128. Accordingly, the first part of this question is answered in the negative, and the last part in the affirmative."

2. This opinion of the Comptroller General does not affect the previous opinion of this office that persons returning from overseas duty prior to June 30, 1952 will forfeit any leave earned during 1952 and not used prior to the close of business 30 June 1953. As for persons present in the United States on home leave at close of business 30 June 1953 it is the opinion of this office that their leave would not be affected by the aforementioned rider. However, this finding could be upset by an opposite ruling by the Comptroller General. The possibility of such a reversal, however, is believed to be very improbable.

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